

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MARVIN E. MYERS,  
Plaintiff,

vs.

Civil Action 2:12-CV-255  
Judge Graham  
Magistrate Judge King

D. BLACKWELL,  
Defendant.

REPORT AND RECOMMENDATION

Plaintiff, an Ohio inmate, has filed an application for the entry of defendants' default. Doc. No. 27. The record reflects that plaintiff has not provided all required service papers (*i.e.*, a copy of the *Amended Complaint*, a summons and a Marshal service form) for defendants Ohio Department of Rehabilitation and Correction and Blackwell. Moreover, the remaining defendants, who have been served with process, were granted forty-five days after service in which to respond to the *Amended Complaint*. See *Order*, Doc. No. 4. That time has not yet passed. In any event, certain defendants have filed a motion to dismiss for failure to state a claim. Doc. No. 23. Plaintiff is **ADVISED** that he may have until September 7, 2012 to respond to that motion. His failure to respond may result in the grant of the motion to dismiss.

For all these reasons, it is **RECOMMENDED** that plaintiff's application for the entry of defendants' default, Doc. No. 27, be **DENIED**.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to

objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Norah McCann King  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge

DATE: August 16, 2012